30. The method defined in claim 27 wherein, after the voting process, the prices for said use rights are offered to the suppliers who then decide whether or not to accept.

31. The method defined in claim 27 wherein said sample's revealed willingness to pay for said use right is taken as a basis for the price to be paid by the remaining members of the group, irrespective of whether or not said voting sample approved the purchase of said use right at the price voted upon.

32. The method defined in claim 27 wherein, in case of a rejection of the offered use right, the members of said voting sample are being held not to employ any alternative means of exploiting the right being covered by said use right for the duration of the rejected use right's validity.

REMARKS

The present amendment is submitted in an earnest effort to advance this case to issue without delay.

1. The Examiner's acknowledgement of the claim to domestic priority, based upon the provisional application in paragraph 15 of PTO-326 is appreciated.

2. The specification has been amended to eliminate the informalities noted by the Examiner in paragraph 1 of page 2 of the office action and other informalities of a typographical nature.

Where possible, the corrected paragraphs have been provided and a marked up version of those pages is supplied.

As to page 23, where the issue is the spacing between the table and the paragraph beneath the table, an introduction of the space has been requested.

The changes do not involve any new matter.

3. Claims 1 to 26 have been replaced by new claims 27 to 32, carefully drafted to define the invention with particularity over the references and to eliminate all grounds of rejection under 35 USC 112, second paragraph.

4. With respect to the rejection under 35 USC 112, the Examiner is advised that consistency in terminology has been maintained and an explanation has been provided below with respect to terminology as to which the Examiner has raised a question.

Details with respect to the Clarke process no longer are required in view of the wording of the claims which have been adopted. The Examiner is invited to telephone the undersigned at the number given at the foot of this amendment should there be any question with respect to particular terminology in the claims as they now stand. Withdrawal of the rejection under 35 USC 112, second paragraph is requested.

5. The rejection under 35 USC 101 is no longer applicable. The claimed invention does include a series of steps which are to be performed utilizing a specific machine or manufacturer

and is a process for facilitating a business transaction. The claims require the use of a database and a communications facility and thus correspond to or post computer activities coupled with utilization of database and internet structures. All of the claims are proper method of doing business claims utilizing structure to facilitate such method. None of the claims are directed purely to thought processes or purely to mathematical calculations.

Withdrawal of the rejection under 35 USC 101 is therefore requested.

6. The Examiner has applied the **Lupien** reference and has commented upon the original use of the term "options" clearly in the mistaken assumption that Applicant is dealing with some tangible commodity as to which the law of supply and demand may apply and as to which the number of the particular and the actual physical distribution of that number of goods is the problem dealt with.

That is not the case.

Applicant is dealing with *rights to use* and as to *rights to use*, they are unlimited in number, personal to the individual and hence nontransferable by that individual as contrasted with an article which, once purchased becomes the property of that individual capable of actual physical delivery to another party. When understood in this manner, it should be clear that **Lupien** is inapposite to this invention in that the invention focuses on developing a price for the right where there are an unlimited number of rights available and hence the vote and its result is crucial. Applicant has described his invention in the following

fashion, discussing the right to use, e.g. a right to use musical composition or some similar right in Intellectual Property Law:

"The objective of someone selling this type of good would be to sell it to any potential buyer at as high a price as possible. Lupien's invention, however, works well at selling as many units of a good as there are units for sale at a price as high as the seller sets it. In other words, the goods in the cited patents are commodities - they are "tradeable". The goods that I am describing are explicitly non-tradeable; they are contracts/licenses to use certain goods for strictly personal benefit. This personal right to use of course does not include any services or goods needed to actually execute those rights. For example, I might gain the right to listen to a song, but I still have to make a copy myself from a friend's copy or download it from the internet.

This invention solves the most difficult problem of a market where every buyer knows that he will get the good anyway: determining the highest price that he is willing to pay. In Lupien and in Staellart, both the sellers prices and the buyers prices are being determined by asking buyers and sellers. In my invention, the "sellers" only know that they want to extract the full (yet unknown) willingness to pay of the buyers.

In the first paragraph, the examiner interprets "Lupien's price/quantity combination to be the marginal cost of the present invention." However, Lupien is trading commodities where the price at the market (the marginal cost to "produce" more of the same securities) covers all the costs associated with the good and where

the good is further available for unrestricted trade. Transferring this concept to the market that my invention wants to serve would mean that there is no advantage being gained for market efficiency and/or freedom to use different goods because either (1) the marginal cost prices don't cover initial, sunk costs of development and suppliers would go bankrupt or (2) prices are the same uniform per unit prices as they are available in a conventional market. This is the reason why this invention offers negotiation and decision making processes to agree on an initial price to be paid for the right to use the market's goods. Also, this invention implies a limitation of the traded good: it is a non-transferable, personal right to use something, thereby limiting all additional costs (the second price) to those costs associated with executing those rights. Either this use price is established beforehand or the suppliers allow an infrastructure where third parties provide "copies" of the otherwise protected (for example, by intellectual property law) goods on a competitive basis to those with rights to use. Lupien is short of any of these provisions. On the other hand, this definition of the traded good does not limit the extent to which a buyer can execute a right to use. Whereas an option in Lupien would clearly state how many securities one could by at which price, the personal right to use would allow using a software, watching a film, or taking some sort of medication as often as desired within the potential time restrictions of the right.

A difference between Lupien and the matter claimed is that the suppliers are not making any offers. Instead, they look

at the "auction result" and determine a price/quantity combination that maximizes their revenue. For the use rights being traded in my invention, Lupien's step of collecting offers from suppliers would be useless because suppliers have no benefit in keeping the use rights for themselves (unlike other sellers who have production costs or expect better prices in the future).

The bundling of consumers in the present invention is different from Lupien: There, bundling takes place among all buyers presently bidding within the market for one good. Bundling of buyers in the present invention takes place in the very beginning, and the same group remains the same (with individual additions and leaves) over all transactions in the lifespan of the group."

The claim system, therefore, operates with a different group from Lupien and calculates a price for a different kind of thing than does Lupien in a different way. The claims therefore distinguish over Lupien.

The Examiner has combined Stalleart with Lupien because Stalleart discloses differentiated and substitutable goods which the Examiner has interpreted as being the equivalent to the goods originally claimed. However, those goods are not the equivalent of the use rights now recited and thus that combination is no longer appropriate.

The claims therefore distinguish over the combination of Lupien with Stalleart.

Claims 27 to 32 are thus deemed to be allowable and an early notice to that effect is earnestly solicited.

7. A petition for an automatic one month extension of the term is enclosed together with a PTO-2038 form covering the fee.

Respectfully submitted,
The Firm of Karl F. Ross P.C.

Herbert Dubno, Reg. No. 19,752
Attorney for Applicant

DB-
DATED: 16 December 2002

5676 Riverdale Avenue Box 900
Bronx, NY 10471-0900
Cust. No.: 535
Tel: (718) 884-6600
Fax: (718) 601-1099

Encls: PTO-2038
Petition for Extension

and the personal payment databases 17(y) which will guarantee due payments because of the payment contracts 16(y).

Fig.5 shows how the preferred embodiment of this invention applies Clarke's Demand Revealing Process. Coming from Fig.4 over connector A (step 407/501), group 10, unit 70, or any other agent selects a representative sample 10' of group 10 in step 502. Similarly to step 409, step 503 estimates the sample's marginal willingness to pay 15':33(x) for option 33(x). Based on this estimate, step 504 determines sample option price 18':33(x) to match 15':33(x) followed by step 505 assigning personal option prices 18(y)':33(x) to individual members of sample 10'. Step 506 offers option 33(x) to use good 31(x) at use price 34(x) to sample 10'. The next step 507 elicits the personal willingness to pay of the members of sample 10' for (or for preventing) the collective purchase of option 33(x) at the assigned personal option prices 18(y)':33(x). To prevent exaggerated statements of personal willingness to pay for the purpose of an overly strong influence on the collective decision, step 508 calculates a pivotal tax of any pivotal voter 12(y)' and processes payments accordingly:

Whenever a single voter decides the vote differently from what the decision would have been if only he would not have had participated, he must pay – apart from his personal option price 18(y)':33(x) in the case of approval – an additional amount corresponding to the welfare loss of all other voters. Therefore, this second amount is only to be paid by *pivotal* sample members, whoose participation was crucial for the outcome of the vote.

To clarify the *pivotal process*: The computer program *megasoft* is available in retail trade for 50 US$. For simplicity, assume that no rivaling substitute is available. Table 1 shows the willingness to pay of the consumers 12(1-10)', who are the only members of sample 10'. The estimate of the sample's willingness to pay for the option 33(*megasoft*) to use *megasoft* at the determined use price 34(*megasoft*) of zero shall be 100US$. For simplicity again, the assigned personal option prices 18(y)':33(*megasoft*) are uniform for all sample members: 10US$.

By voting, each participant not only indicates which decision he favors, but also, how much he favors that particular outcome. Sample member 12(1)', for example, has a willingness to pay of $60 and would acquire *megasoft* in retail trade, thus gaining a consumer surplus of $10. With the collective purchase, he would save $40 as compared to the purchase in retail trade. Thus, he votes with this value in favor of the collective purchase. 12(2-10)' behave similarly. Member 12(6)' seems to be particularly against the acquisition. He votes with 110 US$ against the offer, although it would cost

marked up copy to SHOW CHANGES MADE